

Assembly Bill No. 1669

Passed the Assembly August 23, 2016

Chief Clerk of the Assembly

Passed the Senate August 16, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 1070, 1071, and 1072 of, to amend the heading of Chapter 4.6 (commencing with Section 1070) of Part 3 of Division 2 of, and to add Sections 1075 and 1076 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1669, Roger Hernández. Displaced employees: service contracts: collection and transportation of solid waste.

Existing law requires a local government agency letting a public transit service contract out to bid to give a bidding preference for contractors and subcontractors who agree to retain for a specified period certain employees who were employed to perform essentially the same services by the previous contractor or subcontractor. Such a contractor or subcontractor is required to offer employment to those employees, except for reasonable and substantiated cause. Existing law requires a successor contractor or subcontractor that determines that fewer employees are needed than under the prior contract to retain qualified employees by seniority within the job classification. The existing contractor is required to provide prescribed information regarding employment under the existing service contract to the awarding authority, any entity that the awarding authority identifies as a bona fide bidder, and the successor contractor. Existing law authorizes an employee who was not offered employment or who has been discharged in violation of existing law, or his or her agent, to bring an action against the successor contractor or subcontractor in any superior court having jurisdiction over the successor contractor or subcontractor. Existing law authorizes an awarding authority to terminate a service contract under prescribed circumstances.

This bill would expand the application of these provisions to exclusive contracts for the collection and transportation of solid waste. The bill would require the information provided to a bona fide bidder to be made available in writing at least 30 days before bids for the service contract are due. The bill would establish certain provisions applicable only to service contracts for the collection and transportation of solid waste, including limits on

the requirement to retain employees and specified requirements for notice and opportunity to cure in the context of civil action or termination. The bill would not apply to contracts awarded before January 1, 2017, or to contracts for which the bid process has been completed before January 1, 2017. By requiring local agencies to give a bidding preference under these provisions to those contractors and subcontractors for the collection and transportation of solid waste, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. The heading of Chapter 4.6 (commencing with Section 1070) of Part 3 of Division 2 of the Labor Code is amended to read:

CHAPTER 4.6. PUBLIC TRANSIT SERVICE CONTRACTS AND
CONTRACTS FOR THE COLLECTION AND TRANSPORTATION OF SOLID
WASTE

SEC. 2. Section 1070 of the Labor Code is amended to read:

1070. The Legislature finds and declares all of the following:

(a) That when public agencies with jurisdiction over public transit services or the collection and transportation of solid waste award contracts to operate bus and rail services, or to provide for the collection and transportation of solid waste to a new contractor, qualified employees of the prior contractor who are not reemployed by the successor contractor face significant economic dislocation as a result.

(b) That those displaced employees rely unnecessarily upon the unemployment insurance system, public social services, and health programs, increasing costs to these vital government programs

and placing a significant burden upon both the government and the taxpayers.

(c) That it serves an important social purpose to establish incentives for contractors who bid on public transit service contracts or contracts for the collection and transportation of solid waste to retain qualified employees of the prior contractor to perform the same or similar work.

SEC. 3. Section 1071 of the Labor Code is amended to read:

1071. The following definitions apply to this chapter:

(a) “Awarding authority” means any local government agency, including any city, county, special district, transit district, joint powers authority, or nonprofit corporation that awards or otherwise enters into contracts for public transit services or for the collection and transportation of solid waste performed within the State of California.

(b) “Bidder” means any person who submits a bid to an awarding authority for a public transit service contract, an exclusive contract for the collection and transportation of solid waste, or a subcontract.

(c) “Contractor” means any person who enters into a public transit service contract or an exclusive contract for the collection and transportation of solid waste with an awarding authority.

(d) “Employee” means any individual who works for a contractor or subcontractor under a contract. “Employee” does not include an executive, administrative, or professional employee exempt from the payment of overtime compensation within the meaning of subdivision (a) of Section 515 or any person who is not an “employee” as defined under Section 2(3) of the National Labor Relations Act (29 U.S.C. Sec. 152(3)).

(e) “Person” means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

(f) “Public transit services” means the provision of passenger transportation services to the general public, including paratransit service.

(g) “Service contract” means any contract the principal purpose of which is to provide public transit services or the exclusive right to provide collection and transportation of solid waste through the use of employees.

(h) “Solid waste” has the same meaning as defined in Section 40191 of the Public Resources Code.

(i) “Subcontractor” means any person who is not an employee who enters into a contract with a contractor to perform a portion of the contractor’s express obligations under a service contract. “Subcontractor” does not include a contractor’s vendors, suppliers, insurers, or other service providers.

SEC. 4. Section 1072 of the Labor Code is amended to read:

1072. (a) A bidder shall declare as part of the bid for a service contract whether or not the bidder will retain the employees of the prior contractor or subcontractor for a period of not less than 90 days, as provided in this chapter, if awarded the service contract.

(b) An awarding authority letting a service contract out to bid shall give a 10 percent preference to any bidder who agrees to retain the employees of the prior contractor or subcontractor pursuant to subdivision (a).

(c) (1) If the awarding authority announces that it intends to let a service contract out to bid, the existing service contractor, within a reasonable time, shall provide to the awarding authority the number of employees who are performing services under the service contract and the wage rates, benefits, and job classifications of those employees. In addition, the existing service contractor shall make this information available to any entity that the awarding authority has identified as a bona fide bidder. This information shall be made available to each bona fide bidder in writing at least 30 days before bids for the service contract are due, whether by inclusion of the information in the request for bids or otherwise. If the successor service contract is awarded to a new contractor, the existing contractor shall provide the names, addresses, dates of hire, wages, benefit levels, and job classifications of employees to the successor contractor. The duties imposed by this subdivision shall be contained in all service contracts.

(2) A successor contractor or subcontractor who agrees to retain employees pursuant to subdivision (a) shall retain employees who have been employed by the prior contractor or subcontractors, except for reasonable and substantiated cause. That cause is limited to the particular employee’s performance or conduct while working under the prior contract or the employee’s failure of any controlled substances and alcohol test, physical examination, criminal background check required by law as a condition of employment,

or other standard hiring qualification lawfully required by the successor contractor or subcontractor.

(3) The successor contractor or subcontractor shall make a written offer of employment to each employee to be retained pursuant to subdivision (a). That offer shall state the time within which the employee must accept that offer, but in no case less than 10 days. Nothing in this section requires the successor contractor or subcontractor to pay the same wages or offer the same benefits provided by the prior contractor or subcontractor.

(4) If, at any time, the successor contractor or subcontractor determines that fewer employees are required than were required under the prior contract or subcontract, the successor contractor or subcontractor shall retain qualified employees by seniority within the job classification. In determining those employees who are qualified, the successor contractor or subcontractor may require an employee to possess any license that is required by law to operate the equipment that the employee will operate as an employee of the successor contractor or subcontractor.

SEC. 5. Section 1075 is added to the Labor Code, to read:

1075. Notwithstanding any other provision of this chapter, the following shall apply to service contracts for the collection and transportation of solid waste:

(a) A successor contractor or subcontractor shall be required to retain only employees of a contractor or subcontractor under a prior service contract whose employment would be terminated if the service contract were awarded to another contractor or subcontractor.

(b) A successor contractor or subcontractor shall not be required to retain an employee of a contractor or subcontractor under a prior service contract under any of the following circumstances:

(1) If the employee of the prior contractor or subcontractor does not meet any standard hiring qualification lawfully required by the successor contractor or subcontractor for the position.

(2) If the successor contractor or subcontractor would be required to terminate or reassign an existing employee covered under a collective bargaining agreement with the successor contractor or subcontractor in order to hire the employee of the prior contractor or subcontractor.

(3) If, and to the extent, the actual number of employees meeting the requirements of this chapter exceeds the number of those

employees communicated to bona fide bidders in accordance with paragraph (1) of subdivision (c) of Section 1072.

(c) An employee or his or her agent shall not bring an action against a successor contractor or subcontractor under subdivision (a) of Section 1073 without first giving the successor contractor or subcontractor written notice of the violation or breach and 30 days to cure the violation or breach. An awarding authority shall not terminate a service contract under subdivision (a) of Section 1074 without first giving the successor contractor or subcontractor written notice of the violation or breach and 30 days to cure the violation or breach.

(d) This chapter shall only apply to service contracts for the collection and transportation of solid waste when an awarding agency decides to let an exclusive solid waste collection and transportation contract out to bid. It is not intended to determine whether or not a local agency should procure a service contract by inviting bids, extend an existing service contract, renegotiate its service contract with the prior contractor, or exercise any other right it possesses pursuant to Section 40059 of the Public Resources Code to determine aspects of solid waste handling that are of local concern.

(e) This chapter does not modify, limit, or abrogate in any manner any franchise, contract, license, or permit granted or extended by a city, county, or other local government agency before January 1, 2017.

SEC. 6. Section 1076 is added to the Labor Code, to read:

1076. The amendments and additions to this chapter made by the act adding this section shall not apply to contracts awarded before January 1, 2017, or to contracts for which the bid process has been completed before January 1, 2017.

SEC. 7. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Approved _____, 2016

Governor